

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FREDRICK R. BACA,

Plaintiff,

vs.

No. 2:19-cv-00570-KWR-GBW

CLOVIS POLICE DEPARTMENT, *et al.*,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition ("PFRD") (Doc. 36), recommending that the Court grant summary judgment in Defendants' favor based on the undisputed facts presented in Defendants' Martinez Report (Doc. 31) and dismiss Plaintiff's Amended Complaint (Doc. 13) with prejudice as to all federal and state constitutional claims and without prejudice as to any state claims other than constitutional claims.

The Magistrate Judge filed his PFRD on August 9, 2021. Doc. 36. On August 24, 2021, Plaintiff filed a document captioned "Plaintiff[']s Reply to Defendants['] Martinez Report." Doc. 37. In form and substance, this filing constitutes a surreply to Defendants' Reply (Doc. 34), which Plaintiff has submitted without obtaining leave from the Court as required by the Local Rules. *See* D.N.M.LR-Civ. 7.4(b) ("The filing of a surreply requires leave of the Court."). While the Court must liberally construe a pro se party's filings, the pro se party is subject to "the same rules of procedure that govern other litigants." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) (quoting *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994)). Plaintiff is not excused from the requirement to obtain leave before filing a surreply.


Furthermore, Plaintiff's filing does not address any of the arguments or authority presented in the Magistrate Judge's PFRD. Thus, the Court cannot, however liberally, construe this filing as raising objections to the PFRD. For these reasons, the Court STRIKES Plaintiff's filing. *See Ysais v. N.M. Jud. Standard Comm'n*, 616 F. Supp. 2d 1176, 1184 (D.N.M. 2009) (noting the Court's discretion to strike filings "not allowed by local rule, such as a surreply filed without leave of court" (citation omitted)).

No party has filed objections to the PFRD within fourteen days as set forth in 28 U.S.C. § 636(b)(1)(C). Appellate review of these issues is therefore waived. *See United States v. 2121 E. 30th Street*, 73 F.3d 1057, 1059–60 (10th Cir. 1996). Failure to object to the PFRD also waives the right to *de novo* review by the district court. *See id.* at 1060; *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985). Nevertheless, the Court has conducted a *de novo* review of the Magistrate Judge's findings in this case. *See 2121 E. 30th Street*, 73 F.3d at 1061. The Court hereby concurs with all of the factual and legal conclusions recited therein.

Wherefore, **IT IS HEREBY ORDERED** that:

- (i) the Magistrate Judge's PFRD (Doc. 36) is **ADOPTED**;
- (ii) Defendants' Martinez Report (Doc. 31) is hereby construed as a Motion for Summary Judgment and is **GRANTED**;
- (iii) Plaintiff's Reply (Doc. 37) to Defendants' Martinez Report is **STRICKEN**; and
- (iv) Plaintiff's Amended Complaint (Doc. 13) is **DISMISSED WITH PREJUDICE** as to all federal and state constitutional claims and **DISMISSED WITHOUT PREJUDICE** as to any remaining state claims other than constitutional claims.

IT IS SO ORDERED.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE